

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TIMM GRANDVIEW, LLC, a Nebraska
Limited Liability Company;

Plaintiff,

vs.

AMGUARD INSURANCE COMPANY, a
Pennsylvania Company; and
WESTGUARD INSURANCE
COMPANY, a Pennsylvania company;

Defendants.

8:20CV197

ORDER

On July 30, 2021, Plaintiff contacted the court to alert the undersigned magistrate judge to a discovery dispute between Plaintiff Timm Grandview, LLC (“Plaintiff”) and Defendant WestGUARD Insurance Company (“WestGUARD”). The court agreed to hold a discovery conference but asked the parties to provide position statements prior to the conference outlining the nature of scope of the potential dispute.

Plaintiff provided the court with a statement indicating that the disputed requests were Defendant WestGUARD’s Answer to Interrogatory No. 7; Responses to Requests for Production Nos. 9, 10, 11, 18, 30, 31, and 34; and Responses to Requests for Admission Nos. 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 20, 26, 27, 28, and 29. Plaintiff further noted that Plaintiff’s counsel has conferred with opposing counsel and that counsel for WestGUARD indicated that he planned to provide several supplemental responses (or at least to re-evaluate previous responses for completeness and accuracy). However, at the time of Plaintiff’s correspondence to the court, WestGUARD had not supplemented its discovery

responses or otherwise advised Plaintiff's counsel of its decisions relating to potential supplementation.

WestGUARD also provided a position statement to the court. In the statement, WestGUARD's counsel represents that he plans to meet with his client prior to the discovery conference scheduled for August 17, 2021 and will then be in a position to inform the court and opposing counsel of the nature and extent of the anticipated supplementation WestGUARD will provide. Thus, at present, the court and Plaintiff are left guessing, both whether WestGUARD will further answer discovery and when it will do so.

WestGUARD's co-defendant AmGUARD Insurance Company ("AmGUARD") was recently sanctioned in this case in analogous circumstances. (Filing No. 100). It is the court's understanding that the discovery served on both defendants is being handled internally at the insurance entities by the same department and/or individuals. There, AmGUARD repeatedly indicated that it planned to submit supplemental discovery responses. (See, e.g., Filing No. 92). Then, even when faced with explicit court deadlines, it did not do so. The court made clear, and reiterates now, that its patience with the serial, dilatory discovery practices in this case is waning. As noted in the order sanctioning AmGUARD, the court will consider harsher sanctions if faced with additional discovery gamesmanship and delay. (Filing No. 100 at CM/ECF p. 12, fn. 2).

Given the current posture, the court does not believe that a conference would be fruitful. Defense counsel should confer with his client and WestGUARD must then immediately supplement its discovery responses, as necessary. Plaintiff is given leave to file a discovery motion, as it deems appropriate, if it believes the responses provided by WestGUARD remain deficient.

Accordingly IT IS ORDERED:

- 1) The telephonic conference set for August 17, 2021 at 11:00 AM is cancelled.
- 2) WestGUARD shall provide supplemental discovery responses, if any, to Plaintiff's pending discovery requests by no later than August 23, 2021.
- 3) Plaintiff is given leave to file a discovery motion related to WestGUARD's Answer Interrogatory No. 7; Responses to Requests for Production Nos. 9, 10, 11, 18, 30, 31, and 34; and Responses to Requests for Admission Nos. 5, 6, 7, 8, 9, 10, 12, 13, 15, 16, 17, 18, 20, 26, 27, 28, and 29. Any such motion may be filed at any time after Defendant's August 23, 2021 deadline to supplement but shall be filed no later than August 30, 2021.

Dated this 16th day of August, 2021.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge